

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-759

March 2, 1999

MAINE PUBLIC SERVICE COMPANY
Request for Approval of
Affiliated Interest Transaction
with Energy Atlantic LLC

ORDER APPROVING
SETTLEMENT AGREEMENT

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we approve a Settlement Agreement allowing Maine Public Service Company (MPS) to transfer a power sales agreement (PSA) to its wholly-owned marketing affiliate, Energy Atlantic, LLC (EA).

II. BACKGROUND

On September 29, 1998, MPS, pursuant to 35-A M.R.S.A. § 707, filed for approval of an affiliated interest transaction between itself and EA, its energy marketing subsidiary. Through the petition, MPS seeks approval to assign to EA a PSA between MPS and the Houlton Water Company (HWC). MPS also requests that it be allowed to assign the PSA to EA at no charge, provided EA bears all costs of performance.

On July 1, 1998, MPS entered a PSA with HWC. Under the agreement, MPS will sell to HWC its total requirements from February, 1999 through March, 2000. HWC, at its option, may extend the contract up to December 31, 2000. All the energy and capacity sold to HWC under the PSA would be purchased by EA from the New Brunswick Power Corporation (NBP); none of the power would come from any MPS-owned facilities.

In its petition, MPS states that the sale of power to HWC under the PSA is a "non-core" activity and, therefore, must be conducted through a separate corporate entity under Chapter 820 of the Commission's Rules. MPS argues that, because the HWC sales are a non-core activity and cannot, therefore be performed by MPS, the PPA has no market value under Chapter 820, section (4). Upon this rationale, MPS proposes that EA not compensate MPS for the assignment of the PPA, and that EA bear all the costs of performance and be allowed to retain all profits under the agreement.

HWC intervened in the proceeding, opposing the transfer of the PSA to EA because the propriety of the transfer depended on the Commission's decision regarding MPS's generation asset divestiture. HWC initially opposed approval of the MPS divestiture.

III. SETTLEMENT

On January 29, 1999, MPS filed a Settlement Agreement in which MPS, HWC and the Public Advocate recommend that the Commission permit the transfer of the PSA to EA as proposed in MPS's petition. The agreement states that HWC no longer objects to MPS's divestiture of its generating assets (as a result of an agreement on market power issues) and therefore does not object to the transfer of the PSA to EA.

IV. DISCUSSION

We approve the settlement and allow MPS to transfer the PSA to EA as not adverse to the public interest. By approving the settlement, we make no finding on whether MPS (and correspondingly, its ratepayers) should be compensated for the value of the PSA pursuant to Chapter 820.¹ Because MPS is currently subject to a rate plan, it is unlikely that revenues from the PSA would impact rates. Accordingly, we will defer any resolution of the issue to a future rate proceeding if the matter ever becomes relevant to setting MPS's rates.

Accordingly, we

O R D E R

1. The settlement agreement attached to this Order is hereby approved.

2. That Maine Public Service Company is authorized, pursuant to 35-A M.R.S.A. § 707, to transfer its power sales agreement with Houlton Water Company to Energy Atlantic, LLC.

Dated at Augusta, Maine this 2nd day of March, 1999.

¹As a result, we do not address the MPS argument that the MPS/HWC PSA has no market value because MPS is unable to perform the contract.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of adjudicatory proceedings are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 6(N) of the Commission's Rules of Practice and Procedure (65-407 C.M.R.11) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which consideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note:The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.